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FIRST AMENDMENT TO LEASE OF RAILROAD EQUIPMENT ~~INTERSTATE COMMERCE COMMISSION~~

FIRST AMENDMENT dated as of May 3, 1976 to that LEASE OF RAILROAD EQUIPMENT dated as of November 22, 1974 between THE WESTPORT BANK AND TRUST COMPANY, a Connecticut banking corporation (hereinafter called "Lessor") and THE PICKENS RAILROAD COMPANY, a South Carolina corporation (hereinafter called "Lessee").

WITNESSETH:

WHEREAS, Lessor and Lessee executed a Lease of Railroad Equipment dated as of November 22, 1974 (hereinafter the "Lease") which was filed with the Interstate Commerce Commission on December 27, 1974 and bears recordation number 7754-A; and

WHEREAS, the Lease provides, as security for the payment of all rent due and to become due thereunder, a certain Rental Escrow Account in which Lessee shall deposit two quarterly rental payments (the "Agreed Deposit"); and

WHEREAS, the Lessee may, with the prior consent of Lessor, invest such amounts as may be on deposit in the Rental Escrow Account to purchase new unequipped boxcars for general service as described in 49 C.F.R. 1036.1 as amended from time to time (hereinafter "Boxcars"), with the amount of such investment thereafter credited to the Agreed Deposit and the Boxcars made security for the rental payments under the Lease; and

WHEREAS, Lessee has previously purchased with the consent of Lessor and Lessor's assign, First Pennsylvania Bank N.A. ("FPB"), two Boxcars for the sum of \$61,204.36 which sum has been credited to the Agreed Deposit; and

WHEREAS, the Lease requires Lessee to furnish, as additional security for rental payments thereunder, two Letters of Credit with Credit Letter One in the amount of \$75,000 and Credit Letter Two equal to the difference between

\$75,000 and the sum of (1) amounts on deposit in the Rental Escrow Account and (ii) the amount of any authorized investment credited to the Agreed Deposit; and

WHEREAS, the Lessee desires to purchase three additional Boxcars, each in the amount of \$30,602.18 and to amend the Lease to eliminate the Letters of Credit and Lessor is willing to accept such substitute security and amend the Lease but only on the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the foregoing, the rentals under the Lease and the mutual covenants hereinafter set forth, the Lessor and Lessee amend the Lease as follows:

1. Section 2.6 of the Lease is deleted in its entirety and there is substituted therefor the following:

"2.6 Security for Rentals. As security for the payment of all rent due and to become due hereunder and the due performance of all Lessee's covenants and agreements to be performed hereunder, Lessee shall grant, mortgage and convey to Lessor or Lessor's assign, five Boxcars including all substitutions and replacements therefor and accessories, appurtenances, parts, improvements and equipment owned by Lessee now or hereafter pertaining or affixed to any of such Boxcars."

2. Section 2.7 of the Lease is deleted in its entirety and there is substituted therefor the following:

"2.7 Additional Compensation. As additional compensation hereunder, Lessee agrees to pay to Lessor the sum of \$2,400 for each annual period June 1 through May 31 during the original and any extended term of this Lease with the first such payment due June 1, 1977. Lessee agrees to pay to Lessor on termination of this lease the pro rata monthly portion of such amount for any partial annual period then expired."

3. Section 2.8 of the Lease is hereby deleted in its entirety and there is substituted therefor the following:

"2.8 Per Diem and Mileage Payments. As additional security for the payment of rent and all other amounts due and to become due hereunder and the due observance of all Lessee's covenants and agreements to be performed hereunder, Lessee shall deliver, or cause to be delivered, to Lessor the letter agreement in substantially the form attached hereto as Exhibit 2." (Exhibit 1 to this Amendment).

4. Section 11 F of the Lease is hereby deleted in its entirety and there is substituted therefor the following:

"F. if Lessee shall fail to pay when due any amount required under Section 2.6 and such default shall continue for five (5) days, or if Lessee shall create any mortgage or lien upon the Boxcars referred to in Section 2.7 except as permitted by the terms hereof or direct, or attempt to direct, the per diem and mileage payments other than as provided in Section 2.8."

5. This Amendment shall become effective when each of the following shall have been accomplished:

- (a) Lessee shall deliver Invoices marked "paid" and Bills of Sale (in triplicate) for the five Boxcars evidencing transfer of title to the Boxcars to the Lessee free and clear of all liens, claims and encumbrances except the lien of Lessor referred to herein;

- (b) Lessee shall have executed and recorded with the Interstate Commerce Commission a mortgage on the Boxcars in favor of Lessor or Lessor's assign;
- (c) Lessee shall deliver evidence of insurance on the Boxcars as required for all Units under the Lease;
- (d) Lessee shall have delivered in triplicate certified copies of Resolutions authorizing this Amendment and the Mortgage referred to herein; and
- (e) Lessee shall have delivered or caused to be delivered an opinion of its counsel in the form attached hereto as Exhibit 2 to this Amendment.

6. Except to the extent specifically amended herein by this Amendment, all other provisions of the Lease remain in full force and effect as therein written.

IN WITNESS WHEREOF, Lessor and Lessee, pursuant to due corporate authority, have caused this instrument to be signed in their corporate names by duly authorized officers and their corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

THE WESTPORT BANK AND TRUST COMPANY

By: *Paul V. J.* J.V.P.

(CORPORATE SEAL)

Attest: *[Signature]*
V.P. & Secy.

THE PICKENS RAILROAD COMPANY

By: *John H. P.*
Vice President

(CORPORATE SEAL)

Attest: *[Signature]*
Vice Secretary

STATE OF CONNECTICUT :
COUNTY OF Fairfield :

ss. Westport

On this 8th day of July, 1976, before me personally appeared Donald V. Farris, to me personally known, who being by me duly sworn, says that he is a Senior Vice President of THE WESTPORT BANK AND TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Kathleen Comyn
Notary Public

KATHLEEN COMYN

My Commission Expires: NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1980

State of South Carolina
~~COMMONWEALTH OF PENNSYLVANIA~~ :
COUNTY OF Greenville :
ss.

On this 26 day of May, 1976, before me personally appeared John H. Rees, to me personally known, who being by me duly sworn, says that he is the Vice President of THE PICKENS RAILROAD COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Call Call
Notary Public

My Commission Expires: 11/19/79

Pickens Railroad Company

402 CEDAR ROCK STREET - 878-2493

Pickens, South Carolina

29671

May 26, 1976

First Piedmont Bank and Trust Company
Greenville, South Carolina

First Pennsylvania Bank N. A.
1500 Chestnut Street
Philadelphia, Pennsylvania 19101

The Westport Bank & Trust Company
87 East State Street
Westport, Connecticut

Re: Lease of Railroad Equipment dated as of
November 22, 1974 and amended May 3, 1976
between The Westport Bank & Trust Company,
Lessor, and Pickens Railroad Company, Lessee

Gentlemen:

Pursuant to the provisions of the Lease of Railroad Equipment dated as of November 22, 1974 and amended as of May 3, 1976 (the "Lease") between The Westport Bank & Trust Company, Lessor, and ourselves as Lessee, which Lessor has assigned to First Pennsylvania Bank N.A. ("First Pennsylvania"), pursuant to the Assignment of Lease and Agreement ("Assignment") dated as of November 22, 1974 and amended as of May 3, 1976 which Assignment we have and hereby consent to, we have requested the First Piedmont Bank and Trust Company ("First Piedmont") to act as and understand First Piedmont agrees that First Piedmont shall be made the recipient during the term of the Lease of all per diem and mileage payments made by railroads on cars covered by the Lease and on the five (5) additional Boxcars provided as additional security for the payment of rent under Section 2.6 of the Lease. We understand that First Pennsylvania shall notify First Piedmont and us within twenty days prior to each quarterly payment due under the Lease and specify (1) the total amount of such payment due on the quarterly rental payment date; (2) the amount First Piedmont should wire transfer to First Pennsylvania; (3) the amount First Piedmont should wire transfer to Lessor; and (4) the amount, if any, which Lessee has failed to pay to Lessor under Section 2.7 of the Lease.

Promptly upon the receipt of such notice from First Pennsylvania setting forth the total amount of the payment due on the next quarterly rental payment date, First Piedmont shall confirm to First Pennsylvania in items (2), (3) and (4) above, or, if a deficiency exists, First Piedmont shall specify the extent of such deficiency.

ROUTE OF COURTEOUS SERVICE

Within three (3) days prior to the due date of the rental payment under the Lease, we shall provide current funds on deposit with First Piedmont in the full amount of the quarterly payment.

On the quarterly rental payment date First Piedmont shall make payments by wire transfer in accordance with the earlier instructions of First Pennsylvania unless First Piedmont shall have received notice of any default under the Lease from First Pennsylvania, in which event First Piedmont shall collect, hold and apply all per diem payments including mileage on cars covered by the Lease and on the five Boxcars referred to in Section 2.6 without lien or right of set off for the account of First Pennsylvania. If we shall have failed to pay the full amount of the quarterly payment or any amount specified in term (4), First Piedmont shall advise First Pennsylvania and First Pennsylvania may exercise its rights pursuant to the Mortgage and Assignment.

We agree that the obligations of First Piedmont under this Agreement may upon the request of First Piedmont be assumed by some other bank selected by Lessor and First Pennsylvania. Until such time as the obligations hereunder are assumed by some other bank, First Piedmont shall comply with the terms of this letter agreement. Upon a request to find a successor bank, Lessor and First Pennsylvania agree to use their best efforts to obtain a successor.

Please indicate your agreement to the terms of this letter by signing this letter as indicated.

Very truly yours,

PICKENS RAILROAD COMPANY

BY: John H. R...
Vice President

We agree to the foregoing:

FIRST PENNSYLVANIA BANK N.A.

BY: [Signature]

THE FIRST PIEDMONT BANK AND
TRUST COMPANY

BY: [Signature]

THE WESTPORT BANK & TRUST COMPANY

BY: Paul P. [Signature] 5.6.7

WYCHE, BURGESS, FREEMAN & PARHAM

PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

GREENVILLE, SOUTH CAROLINA 29603

C. GRANVILLE WYCHE
ALFRED F. BURGESS
C. THOMAS WYCHE
DAVID L. FREEMAN
JAMES C. PARHAM, JR.
JAMES M. SHOEMAKER, JR.
WILLIAM W. KEHL
CHARLES W. WOFFORD
LARRY D. ESTRIDGE

D. ALLEN GRUMBINE

POST OFFICE BOX 10207
44 EAST CAMPERDOWN WAY
CABLE ADDRESS: JURAL
TELEPHONE 803-242-3131

May 27, 1976

First Pennsylvania Bank N.A.
1500 Chestnut Street
Philadelphia, Pa. 19101

Gentlemen:

We have acted as counsel for the Pickens Railroad Company in connection with a certain Amendment dated as of May 3, 1976 ("Amendment") to Lease of Railroad Equipment dated as of November 22, 1974 and in connection with a mortgage of railroad equipment dated as of May 3, 1976 between Pickens Railroad Company, as Mortgagor, and yourself, as Mortgagee.

We have reviewed the Articles of Incorporation and By Laws of Pickens Railroad Company and made such other investigation as we have considered necessary. On the basis of the foregoing, it is our opinion that:

- (1) Pickens Railroad Company is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of South Carolina with the corporate power and authority to enter into the foregoing Amendment and Mortgage;
- (2) The foregoing Amendment and Mortgage have been duly authorized, executed and delivered by Pickens Railroad Company and constitute a valid, legal and binding obligation of Pickens Railroad Company, enforceable in accordance with their terms, and do not conflict with any provisions of the Articles of Incorporation or By-Laws of Pickens Railroad Company;
- (3) The foregoing Mortgage, when filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act will protect your title and interest in and to the Units covered by the foregoing Mortgage in the United States of America and no filing, recording or deposit (or giving of notice) with any federal, state, or local government, is necessary in the United States of America to protect your title and interest in and to said Units; and

First Pennsylvania Bank N.A.
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(4) Said Units are boxcars within the scope of 49 C.F.R. 1036.1 and Pickens Railroad Company is qualified to receive and has taken all action necessary to qualify said Units to receive, after appropriate use, incentive per diem collectible thereunder.

Very truly yours,

WYCHE, BURGESS, FREEMAN & PARHAM, P.A.

BY: William W. Kehl
William W. Kehl

WWK:ebw